

Senate Bill No. 202

CHAPTER 626

An act to add Section 638 to the Penal Code, relating to privacy.

[Approved by Governor September 29, 2006. Filed with
Secretary of State September 29, 2006.]

LEGISLATIVE COUNSEL'S DIGEST

SB 202, Simitian. Privacy: telephone calling pattern record or list.

Existing law prohibits a telephone or telegraph corporation, with certain exceptions, from making available to any other person or corporation, without first obtaining a residential subscriber's consent in writing, the subscriber's personal calling patterns, including any listing of the telephone or other access numbers called by the subscriber.

Existing law pertaining to the protection of privacy, makes it a crime, punishable by fine or imprisonment or both, with certain exceptions, to wiretap, eavesdrop, or otherwise intercept telephone or telegraph communications without authorization.

This bill would make it a crime, punishable by fine, imprisonment, or both, to purchase, sell, offer to purchase or sell, or conspire to purchase or sell, without the written consent of the subscriber, or procure through fraud or deceit, a telephone calling pattern record or list. Because a violation of the bill's provisions would be a crime, this bill would impose a state-mandated local program by creating new crimes.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 638 is added to the Penal Code, to read:

638. (a) Any person who purchases, sells, offers to purchase or sell, or conspires to purchase or sell any telephone calling pattern record or list, without the written consent of the subscriber, or any person who procures or obtains through fraud or deceit, or attempts to procure or obtain through fraud or deceit any telephone calling pattern record or list shall be punished by a fine not exceeding two thousand five hundred dollars (\$2,500), or by imprisonment in a county jail not exceeding one year, or by both a fine and imprisonment. If the person has previously been convicted of a violation of this section, he or she is punishable by a fine

not exceeding ten thousand dollars (\$10,000), or by imprisonment in a county jail not exceeding one year, or by both a fine and imprisonment.

(b) Any personal information contained in a telephone calling pattern record or list that is obtained in violation of this section shall be inadmissible as evidence in any judicial, administrative, legislative, or other proceeding except when that information is offered as proof in an action or prosecution for a violation of this section, or when otherwise authorized by law, in any criminal prosecution.

(c) For purposes of this section:

(1) “Person” includes an individual, business association, partnership, limited partnership, corporation, limited liability company, or other legal entity.

(2) “Telephone calling pattern record or list” means information retained by a telephone company that relates to the telephone number dialed by the subscriber, or other person using the subscriber’s telephone with permission, or the incoming number of a call directed to the subscriber, or other data related to such calls typically contained on a subscriber telephone bill such as the time the call started and ended, the duration of the call, any charges applied, and any information described in subdivision (a) of Section 2891 of the Public Utilities Code whether the call was made from or to a telephone connected to the public switched telephone network, a cordless telephone, as defined in Section 632.6, a telephony device operating over the Internet utilizing voice over Internet protocol, a satellite telephone, or commercially available interconnected mobile phone service that provides access to the public switched telephone network via a mobile communication device employing radiowave technology to transmit calls, including cellular radiotelephone, broadband Personal Communications Services, and digital Specialized Mobile Radio.

(3) “Telephone company” means a telephone corporation as defined in Section 234 of the Public Utilities Code or any other person that provides residential or commercial telephone service to a subscriber utilizing any of the technologies or methods enumerated in paragraph (2).

(4) For purposes of this section, “purchase” and “sell” shall not include information provided to a collection agency or assignee of the debt by the telephone corporation, and used exclusively for the collection of the unpaid debt assigned by the telephone corporation, provided that the collection agency or assignee of the debt shall be liable for any disclosure of the information that is in violation of this section.

(d) An employer of, or entity contracting with, a person who violates subdivision (a) shall only be subject to prosecution pursuant to that provision if the employer or contracting entity knowingly allowed the employee or contractor to engage in conduct that violated subdivision (a).

(e) It is the intent of the Legislature to ensure that telephone companies maintain telephone calling pattern records or lists in the strictest confidence, and protect the privacy of their subscribers with all due care. While it is not the intent of the Legislature in this act to preclude the sharing of information that is currently allowed by both state and federal

laws and rules governing those records, it is the Legislature's intent in this act to preclude any unauthorized purchase or sale of that information.

(f) This section shall not be construed to prevent a law enforcement or prosecutorial agency, or any officer, employee, or agent thereof from obtaining telephone records in connection with the performance of the official duties of the agency consistent with any other applicable state and federal law.

(g) Nothing in this section shall preclude prosecution under any other provision of law.

(h) The Legislature hereby finds and declares that, notwithstanding the prohibition on specific means of making available or obtaining personal calling records pursuant to this section, the disclosure of personal calling records through any other means is no less harmful to the privacy and security interests of Californians. This section is not intended to limit the scope or force of Section 2891 of the Public Utilities Code in any way.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.